

LABOUR DEPARTMENT

The 29th July, 1985

No. 9/5/84-6Lab/6323.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s. Belmont Rubber Industries 58-B, Industrial Area, N.I.T. Faridabad.

BEFORE SHRI R. N. BATRA,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 433/1983, 434/1983, 435/1983
and 436/1983.

between

S/SHRI NIRMAL PARSHAD, VIDESHI
PARSHAD, RAM BRIJ AND THAKUR
PARSHAD WORKMEN AND THE MANAGE-
MENT OF M/S. BELMONT RUBBER
INDUSTRIES, 58-B, INDUSTRIAL AREA,
N.I.T. FARIDABAD.

Present:

Shri Manohar Lal, for the workmen.

Shri R. C. Sharma, for the management.

AWARD

This award would dispose of 4 consolidated references bearing Nos. 433/1983, Shri Nirmal Parshad, 434/1983, Shri Videshi Parshad, 435/1983 Shri Ram Brij and 436/1983 Shri Thakur Parshad v/s. M/s. Belmont Rubber Industries, 58-B, Industrial Area, N.I.T. Faridabad and the main proceedings have been held in reference No. 433/1983.

2. In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Nirmal Parshad, Videshi Parshad, Ram Brij and Thakur Parshad workmen and the management of M/s Belmont Rubber Industries, 58-B, Industrial Area, N.I.T. Faridabad, to this Tribunal for adjudication:—

Whether the termination of services of Sarvshri Nirmal Parshad, Videshi Parshad, Ram Brij and Thakur Parshad was justified and in order? If not, to what relief are they entitled?

3. Notices were issued to both the parties. The claimants in their claim statement filed on 28th June, 1984, alleged that the claimants were employed by the management as Machine Operators, but they were discharged from service without any notice of chargesheet with effect from 12th January, 1982 and that no retrenchment compensation was paid to them. It was, therefore, prayed that the claimants be reinstated with full back wages because the termination of their services was illegal.

4. The Management in their written statement filed on 1st August, 1984 pleaded that the Workers Union gave a notice of strike on 23rd September, 1981 in which it was mentioned that if Shri Ram Lal, Keshav and other workers were not reinstated, the Union would go on strike. It was further pleaded that the cases of some workers were settled while cases of some workers were pending before the Government for consideration and that later on some cases were settled while other cases were pending for adjudication. It was further pleaded the management informed the workers that their strike would be illegal and unjustified but it commenced with effect from 15th October, 1981. It was then pleaded that workers including the claimants, resorted to physical force, coercion, threats, acts of violence etc., due to which the management chargesheeted the claimants along with other workers and that on 25th November, 1981, the Government of Haryana prohibited the strike. It was further alleged that the domestic enquiry was held by the Inquiry Officer and on receipt of the enquiry report, the management issued second show cause notice to the claimants and then dismissed them from service, after fair and proper enquiry was held by the management.

5. The claimants in their rejoinder, dated 31st August, 1984 took the pleas that the findings of the enquiry officer were based in ex parte proceedings and were perverse.

6. It may be mentioned that the facts in other three cases are the same, but in reference No. 433/1983, the claimant was employed on 11th July, 1977 as Machine Operator while in reference No. 435/1983 the claimant was employed on 1st June, 1975 as Machine Operator, but in reference No. 436/1983, the claimant was employed on 14th April, 1969 as Press Operator and his last pay drawn was Rs. 400 per month, and in reference No. 434/1983, the claimant was employed on 17th June, 1976, as Machine Operator.

7. On the pleadings of the parties, the following issues were framed on 31st August, 1984:—

- (1) Whether the enquiry is fair and proper? OPM.
- (2) Whether the termination of services of Sarvshri Nirmal Parshad, Videshi Parshad, Ram Brij and Thakur Parshad was justified and in order? If not, to what relief are they entitled? OPM.

8. It may be mentioned that the management has examined one witness and documents, Exhibit M-1 to M-44, have been tendered into evidence. The workmen have examined one witness and document, Exhibit W-1, has been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

ISSUE NO. 1:

9. The management has examined MW-1 Shri Satish Ahuja, Advocate, who stated that he was appointed as Enquiry Officer against the four claimants as well as Shri Ram Jeet,—vide Exhibit M-1 to M-5 to enquire into charges mentioned in chargesheets Exhibit M-6 to M-10 and that Exhibit M-11 contained the enquiry proceedings held by him. He further stated that documents Exhibit M-12 to M-26 were produced during the enquiry proceedings and that Exhibit M-27 was his report in which he found the claimants guilty. The documents Exhibit M-28 to M-44 were tendered into evidence by the management.

10. The claimants have examined Shri Thakur Parshad WW-1, who stated that he was employed in the respondent factory on 14th April, 1969, while the other claimants were employed later on. He further stated that they raised certain demands, which was not accepted by the management and the workers organised a Union and thereafter the settlement took place, but the settlement was not implemented. He further stated that notice for strike was given by the workers and that strike started on 15th October, 1981 at 8.00 p.m., which continued for 1½ months. He then stated that the claimants were suspended and that they participated in the enquiry proceedings and their statements were not properly recorded. He further stated that they had made a prayer for change of the Enquiry Officer and demanded suspension allowance, which was not

paid on one pretext or the other. He further stated that on the last date of attending the enquiry, they were told that the next date of hearing would be intimated to Union and their signatures were obtained on the enquiry proceedings, but no date was intimated to the claimants regarding holding of the enquiry. He further stated that Mr. Nagesh represented the claimants in that enquiry and that Exhibit W-1 was the letter written by the claimants to change the Enquiry Officer.

11. A perusal of the above evidence would show that the chargesheet Exhibit M-5, M-6, M-7 and M-8 were served on the claimants in which it was recited that workers of the factory including the claimants resorted to strike with effect from 15th October, 1981 and that the claimants instigated the workers to go on strike and also compelled them to resort to strike. It was further mentioned that claimants stopped the workers who wanted to come inside the factory and gave beating to them and also damaged the car, which was parked outside the factory and further that on 16th October, 1981, they stopped incoming and outgoing goods forcibly and that on 17th October, 1981 they stopped Shri Jagdish Parshad and Shri Sucha Singh workers and detained them from going inside the factory and gave threats to them, if they tried to go inside the factory. Exhibit M-11 contains day-to-day enquiry proceedings. A perusal of the same would show that the enquiry was started against the claimants on 26th September, 1982 and was adjourned to 17th January, 1982, 7th November, 1982 and 21st November, 1982. On 21st November, 1982 Shri R. D. Yadav, representative of the claimants was also present when Shri S. S. Gulati Managing Partner of the factory was examined by the management and was cross-examined by the claimants. The case was adjourned to 30th November, 1982, 14th December, 1982, 26th December, 1982 and then to 9th January, 1983. On 9th January, 1983, the claimants stated that they would not participate in the enquiry till the suspension allowance was paid to them. It was stated by the representative of the management that said amount of Rs. 697.90 paise had already been deposited with the Payment of Wages Authority, but the claimants left the place and thereafter the enquiry was held ex parte against them by the Enquiry Officer. Shri Mohinder Luthra, Shri Rama Shankar, Shri Ram Parshad and Shri Jagdish Parshad were examined by the management. The Enquiry Officer then submitted his report Exhibit M-27, in which it was

mentioned that Shri Ram Jeet 5th claimant had taken the amount in full and final settlement of his claim. The evidence produced by the management was discussed by the Enquiry Officer and he found them guilty of the charges levelled against them. The management gave the second show-cause notices to the claimants Exhibit M-28 to M-31. The claimants filed their replies Exhibit M-32 to M-35. Thereafter, the impugned orders of dismissal were passed on 17th February, 1983 Exhibit M-36 to M-39. The report of the Enquiry Officer Exhibit M-27 is based on the testimony of Shri S. S. Gulati, Shri Mohinder Luthra, Rama Shanker, Ram Parshad and Shri Jagdish Parshad, who have corroborated the version of the management. The plea of the representative of the claimants was that the Enquiry Officer wrongly proceeded ex parte against the claimants. The argument does not carry any weight because the claimants appeared before the Enquiry Officer on several dates with effect from 26th September, 1982 and on 21st November, 1982, their representative was also present when one witness was examined by the management and cross examined by the claimants and thereafter the case was adjourned to several dates and ultimately on 9th January, 1983, the claimants attended the enquiry, but left the place of enquiry on the plea that suspension allowance was not paid to them when it was brought to their notice that the said allowance had already been deposited with the Payment of Wages Authority. Consequently, the claimants did not participate in the enquiry on any cogent ground and the Enquiry Officer had proceeded ex parte against them with effect from 9th January, 1983. Moreover their representative Shri R. D. Yadav was present on 21st November, 1982 but he too did not appear on 9th January, 1983. His absence was thus without any basis. The plea taken in the letter Exhibit W-1 regarding the change of the Enquiry Officer does not help the claimants because MW-1 Shri Satish Ahuja Enquiry Officer was not confronted with this letter in cross examination and he clearly stated that no request was made to him regarding change of the Enquiry Officer. Moreover the letter copy Exhibit W-1 addressed to the Enquiry Officer does not show that it was received by the Enquiry Officer. The argument of the representative of the claimants that the enquiry was not based on the evidence is without any force because the Enquiry Officer has reproduced

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the testimony of 5 witnesses produced by the management and then gave his findings. Under all these circumstances, no interference is called for with the report of the Enquiry Officer. It is thus held that the Enquiry was fair and proper. The issue is decided accordingly against the claimants.

ISSUE NO. 2:

It was argued on behalf of the claimants that the punishment awarded to the claimants was disproportionate to the charges levelled against them, whereas the contention of the representative of the management was that the punishment was in proportion to the charges proved against them. The second show cause notice Exhibit M-28 to M-31 and orders of dismissal Exhibit M-36 to M-39 do not show that past record of the claimants was not clean. Consequently previous record of the claimants was clean. The 5th worker, namely, Shri Ram Jeet, who was also chargesheeted on the same ground, has taken the amount from the management in full and final settlement of his claim, which obviously means that the management thought that the punishment of dismissal was disproportionate to the charges levelled against him and decided to settle the dispute with him. The case of these four claimants cannot be distinguished merely because they have fought litigation with the management. Keeping in view all the circumstances of the case, the punishment of dismissal of the claimants is disproportionate to the charges proved against them, but keeping in view the gravity of the offences committed by them, the order of dismissal is converted into order of termination of service of the claimants with the result that the claimant would be entitled to notice pay and compensation and other benefits, as if their services have been terminated with effect from 17th February, 1983. The award is passed accordingly.

The 23rd July, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Endorsement No. 564, dated 23rd July, 1985. Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.